

PCHB 82-183

BEFORE THE
SHORELINES HEARINGS BOARD AND
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF SUBSTANTIAL
DEVELOPMENT APPLICATIONS,

SAVE PORT SUSAN COMMITTEE,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY AND
SEA HARVEST CORPORATION,

Respondents.

SEA HARVEST CORPORATION,

Appellant,

v.

SNOHOMISH COUNTY,

Respondent,

SAVE PORT SUSAN COMMITTEE,

Intervenor.

SHB No. 82-38

ECPA 14

ORDER ON MOTIONS

SHB No. 82-39

1 ISLAND COUNTY,

2 Appellant,

3 v.

4 STATE OF WASHINGTON,
5 DEPARTMENT OF ECOLOGY AND
6 SEA HARVEST CORPORATION,

7 Respondents,

8 SAVE PORT SUSAN COMMITTEE

9 Intervenor.

10 SEA HARVEST CORPORATION,

11 Appellant,

12 v.

13 ISLAND COUNTY,

14 Respondent,

15 SAVE PORT SUSAN COMMITTEE,

16 Intervenor.

17 and

18 SEA HARVEST CORPORATION,

19 Appellant,

20 v.

21 STATE OF WASHINGTON,
22 DEPARTMENT OF GAME,

23 Respondent,

24 SAVE PORT SUSAN COMMITTEE,

25 Intervenor.

SHB No. 82-40

ECPA 14

SHB No. 83-3

PCHB No. 82-183

27 ORDER ON MOTIONS

SHB Nos. 82-38, -39, -40, 83-3
& PCHB No. 82-183: ECPA 14

1 Motions came for hearing before the Shorelines Hearings Board
2 (Gayle Rothrock, Lawrence Faulk, Art O'Neal, Nancy Burnett and Rodney
3 Kerlsake) on February 15, 1983 in Lacey. Respondent Department of
4 Ecology (DOE) was represented by Charles W. Lean, Assistant Attorney
5 General; Island County was represented by Alan R. Hancock, Deputy
6 Prosecuting Attorney; Snohomish County was represented by Gordon W.
7 Sivley, Deputy Prosecuting Attorney; Sea Harvest Corporation was
8 represented by its attorney John E. Woodring; Save Port Susan
9 Committee was represented by its attorney, Joel M. Gordon; Department
10 of Game was represented by D. Anthony Weeks, Assistant Attorney
11 General.

12 Having considered the motions, affidavits, contentions, and the
13 files and records herein, the Board rules as follows:

14 1. All cases: Save Port Susan Committee's Motion to Intervene is
15 granted. The pleadings filed in SHB No. 82-38 shall be accepted as
16 its pleading in intervention.

17 2. PCHB No. 82-183: By stipulation between the original parties,
18 the case will be dismissed by separate order.

19 3. SHB No. 82-38: Sea Harvest's Motion to Dismiss for lack of
20 jurisdiction is denied. However, Save Port Susan Committee's request
21 for review is dismissed for the reasons set forth in SHB No. 82-40.
22 As a practical matter, the consolidation of the cases and Save Port
23 Susan Committee's intervention in the other pending cases leaves the
24 issues raised in this matter for future resolution.

25
26 ORDER ON MOTIONS
27 SHB Nos. 82-38, -39, -40, 83-3
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4. SHB No. 82-39: Snohomish County's Motion for Summary Judgment on the grounds of res judicata/collateral estoppel is denied. There are genuine issues of material facts which are in dispute.

Sea Harvest's Motion for Summary Judgment on the grounds that it possesses an unconditional shoreline substantial development permit by retroactive application of the 1982 amendments to chapter 90.62 RCW is denied. While the distinction between procedure and substance in the particular application of the amendment is not clear, the effect of the amendment affects substantive rights. Therefore, the amendment in question should not be applied retroactively.

5. SHB No. 82-40: Island County's Motion for Summary Judgment on the ground that the 1982 amendments to chapter 90.62 RCW are inapplicable to Sea Harvest's shoreline development application is granted for the reason previously stated. Sea Harvest's cross motion for summary judgment is denied. This file is closed.

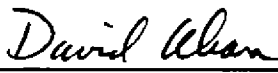
ORDER ON MOTIONS

SHB Nos. 82-38, -39, -40, 83-3
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6. SHB No. 83-3: Island County's Motion for Summary Judgment on the grounds of res judicata/collateral estoppel is denied for reasons previously stated. Sea Harvest's Motion for Summary Judgment on the grounds of improper forum and retroactive effect of the 1982 amendments is denied.

DATED this 24 day of March, 1983.

SHORELINES HEARINGS BOARD


DAVID AKANA, Lawyer Member


GAYLE ROTHROCK, Chairman


LAWRENCE S. FAULK, Member


RICHARD A. O'NEAL, Member


NANCY R. BURNETT, Member


RODNEY M. KERSLAKE, Member